IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITIION NO. 1555 OF 2006

Kanji Kalyanji & Co. & Anr. .. Petitioners.

vs.

The State of Maharashtra

& Anr. .. Respondents.

Shri S. V. Marwadi for petitioners.

Shri D.S. Mhaispurkar, APP for Respondents.

CORAM : J.N. PATEL, AND

SMT. ROSHAN DALVI, JJ.

DATE : 5th October, 2006.

ORAL JUDGMENT (PER J.N.PATEL, J):

1. Rule, returnable forthwith.

2. Heard the learned counsel for the petitioners and the learned P.P. for the state.

3. The petitioner firm has approached this

court for invoking its extraordinary Jurisdiction under article 226 of the Constitution of India and also inherent powers under section 482 of the Cr.P.C. being aggrieved by the refusal on the part of the respondent state in cancelling the bank guarantee bearing G-2-292 dated 16.8.85 drawn on Union Bank of India and kept alive for more than 21 years for the reason that the bank guarantee was required to be furnished by the petitioners pursuant to the orders passed by the respondent Deputy Controller of Rationing, G-Region Office, Kandivali (West), Mumbai 400 067 vide his order dt.16.8.85 further clarified vide order dt.25.10.1985 under which the stock of 125,635 kg of Edible Oils and Vanaspati valued at Rs.20,93,310/- came to be confiscated to the Government in view of the fact that the goods being perishable ordered them by way of disposal of the said stock, the same may be released to the petitioner M/s.Kanji Kalyanji and Co. on production of Bank Guarantee of the equivalent amounts till the decision of the court case against them.

4. The brief facts which led to the prosecution

of the petitioner firm and confiscation of Edible Oils and Vanaspati arise out of a raid conducted by the Police officers of the C.B.C.I.D.(Food and Civil Supplies Department) on the establishment of the petitioner lead by Sr.Inspector of Police, Crime Branch, C.I.D. Bombay on 12.7.85 and the appellant was found in possession of stock of 1,35,635 kgs. of Edible Oil and Vanaspati. The petitioner firm being the wholesale dealer under the provisions in the Pulses, Edible Oil Seeds and Edible Oils (Storage Control) Order, 1977 is not entitled to store or have in the possession at any time stocks of edible oil including Hydrogenated Vegetable Oils in excess of 800 quintals so far as Bombay City was concerned. While the petitioner firm was carrying on such business and as they were found in possession of excess stocks of edible oil including Hydrogenated Vegetable Oils i.e.(1,35,635 - 80,000 kgs.) 55,635 kgs of edible oil including hydrogenated vegetable oil, they came to be charge sheeted by the Police for holding stocks of edible oil including hydrogenated vegetable oil in excess of prescribed limit of 800 quintals for committing breach of condition 2(b) 3(i) of the Licence issued

under the Maharashtra Scheduled Oil seeds and Oil (Dealers and Millers) Licensing order, 1977 and clause 4 of the Pulses Edible Oil Seeds and Edible Oils (Storage Control) order, 1977 and further breach of clause 3 and condition 2(b) of the Licence issued under the Maharashtra Hydrogenated Vegetable Oil Dealers' Licensing Order 1970 which are punishable under section 7 of the Essential Commodities Act, 1955.

5. The excess stock which came to be seized by the Senior Inspector of Police, Crime Branch, C.I.B.,Mumbai was reported to the Deputy Controller of Rationing, G-Region Office, Mumbai for taking action in accordance with clause 6-A, 6-B and 6-C of the Essential Commodities Act, 1955.

6. The petitioner firm was prosecuted for breach of the order for having committed offence under section 7 of the Essential Commodities Act, 1955. Proceedings were also initiated for confiscating the excess stock which came to be seized from the establishment of the petitioner which was of the value of Rs.20,93,310/-.

7. In so far as the prosecution of the petitioner firm is concerned initially the case was filed in the court of Special Judge under the Essential Commodities Act being Special Case No.18/1985 (State of Maharashtra Vs. Shantilal Kalyanji Shah & Ors.)

8. On 16.12.87, the learned Special Judge by his order discharged the original accused no.2 and 4, original accused no.3 Keshav Deoraj Shah, probably one of the partners of the firm had died during the pendency of the case and case was to proceed against the accused Shantilal Kanyanji Shah who is representing the firm and is petitioner no.2 before this court and who is prosecuting the matter.

9. It appears that during the pendency of the prosecution, the Deputy Controller of Rationing, Region-G by the impugned order confiscated the excess stock of Edible Oil and Vanaspati and also released it in favour of the firm on production of bank guarantee of the equivalent amount till the decision of the court case against them. It appears

that the impugned order was taken in appeal before the State under Clause 6-C of the Essential Commodities Act, 1955. By an order dt.28.10.87 the appeal was partly allowed. The prayer of the petitioner for discharging the bank guarantee was not accepted as it was held that the amount of bank guarantee cannot be refunded. It was further directed that the concerned Deputy Controller of Rationing should record a clear finding regarding confiscation of said stocks of Edible Oils and the matter was remanded to the authority.

10. On the prosecution side, the matter got transferred from the court of Special Judge to the Court of Chief Metropolitan Magistrate. During all these years, the petitioner firm kept alive the bank guarantee and sought its revocation on the ground that in view of the common cause judgment passed by the Hon'ble Supreme Court, the case pertaining to Crime No.II-39/1985 has already been disposed of as learnt by the petitioner vide letter dt.6.8.05 issued to the office of Deputy Controller of Rationing, Region-G, Kandivali, Mumbai but as there was no response in the matter and the petitioner

having been put to undue harassment in continuing the bank guarantee and no decision being taken in his case regarding confiscation of excess stock of Edible Oil, he has approached this court for two fold remedies. Firstly, to order cancellation of bank guarantee in favour of respondent and secondly, quashing and setting aside the proceedings against the petitioners in Special Case No.18/1985 arising out of Crime No.II-39/1985, C.B., C.I.D.Mumbai.

11. Inspite of the notice being served on the respondent, no affidavit in reply has been filed to contest the petition. On the other hand, respondents have come up with a case that they are not aware as to what has happened to the prosecution of the petitioner which was pending in the court of Chief Metropolitan Magistrate at Mumbai and further there is no record to show what steps were taken after the State Government passed the order on 28.10.87.

12. The learned counsel for the petitioner submits that this is a fit case where this court should exercise its inherent powers and also invoke

its extraordinary Jurisdiction under Article 226 and 227 of Constitution of India so as to quash and set aside the prosecution pending if any, as well as discharge the petitioners from the bank guarantee. It is also submitted that more than 21 years have passed and now since the petitioner is the only person being prosecuted on behalf of the firm, as other two partners have been discharged and one of them has expired, he is willing to make good the cost of the excess Edible Oil which was seized from his possession.

13. The learned counsel for the petitioner after seeking instruction submitted that the petitioner on assessing the value of the excess Edible Oil at the time of its seizure was Rs.12 lacs and, therefore, the excess stock of Edible Oil which was returned to the petitioner firm, he is prepared to pay the proportionate value of the excess stock which was confiscated and assessed @ Rs.12 lacs.

14. The learned P.P. after seeking seeking instruction from respondent no.2 submitted that in the peculiar facts and circumstances, the respondent

state through the Controller of Rationing i.e. respondent no.1 and 2 are ready to accept sum of Rs.12 lacs as the value of excess stock of Edible Oil which was confiscated. In so far as the prosecution is concerned, the learned P.P. on seeking instruction from the officials of respondent no.2 stated that the case is not traceable and might have been disposed of by the court of Chief Metropolitan Magistrate in view of the decision of the Common Cause I (1996) 4 SCC 33 and Common Cause II (1996) 6 SCC 775 and, therefore, nothing survives in the matter.

15. In view of the peculiar fact-situation and in the light of the decision of the seven judge bench of the Supreme Court in the case of **P.Ramachandra Rao Versus State of Karnataka (2002) 4 SCC 578,** we are prepared to accept the contention of the petitioner that it being a fair offer that he does not want to contest on merits as the matter has been pending for more than 21 years and the petitioner has been put to undue harassment of continuing bank guarantee in the sum of Rs.20,93,310-/- since the year 1985 and is prepared

to offer the proportionate value of the excess Edible Oil which came to be confiscated under the impugned order.

16. In view of the fact that there is no trace of the case pending in the court of Chief Metropolitan Magistrate and in all probability, the same has been disposed of in view of the decision of the Supreme Court in case of common cause, this is a fit case to grant the relief sought for by the petitioner. Hence, we proceed to pass the following order:

> (1) We accept the offer of the petitioner accused to compensate for the surplus edible oil which came to be seized from their establishment on 12.7.1985 to the extent it was found surplus i.e. out of the stock 135634 kgs of edible oil and vanaspati which was valued at Rs. 20,93,310/- and the edible oil and vanaspati which came to be seized was returned by the Deputy Controller of Ration 'G' Region, Bombay in exercise of his power under Section 6-A of the Essential

Commodities Act, 1955. The value of the surplus oil at the time of its seizure is proportionately assessed at Rs. 12 lacs and, therefore, the respondent accepts the demand draft in his favour bearing no. 044107, Union Bank of India dated 4.10.2006. The draft is handed over to the learned Public Prosecutor by the counsel for the petitioner.

(2) We quash and set aside the prosecution against the petitioner in Special Case No. 18/86 arising out of Crime No. II-39/1985, C.B. C.I.D. Mumbai pending in the Court of Chief Metropolitan Magistrate, Mumbai.

(3) In view of the fact that we have quashed the proceedings, the petitioner stands discharged. The petitioner having been discharged, the bank guarantee furnished by the petitioner to stand cancelled on the draft being credited in the account of the respondent. Rule is made absolute in the aforesaid terms.

Authenticated copy of this order be furnished to the learned counsel for the parties to enable the authorities including the bank to cancel the bank guarantee.

(J.N. Patel, J.)

(Smt. Roshan Dalvi, J.)